

(e) The Assistant General Counsel shall designate one or more officers or employees of the Department to present the evidence against the former departmental employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former departmental employee must be sustained by substantial evidence that he/she violated 18 U.S.C. 207 (a), (b) or (c). If a judgment of conviction has been entered by a Federal district court against the former departmental employee for violation of 18 U.S.C. 207 (a), (b) or (c), regardless of whether the judgment is based upon a verdict or a plea of guilty, such judgment of conviction shall be conclusive evidence of a violation of 18 U.S.C. 207 (a), (b) or (c), unless and until the judgment is vacated or reversed on appeal.

(g) The administrative law judge shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal in writing to the Assistant Secretary who in that event shall issue the final decision based on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Assistant Secretary shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former departmental employee fails to appeal from an adverse initial decision within the prescribed period of time, the administrative law judge shall forward the record of the proceedings to the Assistant Secretary.

(j) In the case of a former departmental employee who filed an answer to the notice to show cause but did not request a hearing, the Assistant Secretary shall make the final decision on the record submitted to him by the Assistant General Counsel pursuant to paragraph (b) of this section.

(k) In a case where:

(1) The defense has been waived,

(2) The former departmental employee has failed to appeal from an adverse initial decision, or

(3) The Assistant Secretary has issued a final decision that the former departmental employee violated 18 U.S.C. 207 (a), (b) or (c),

The Assistant Secretary may issue an order:

(i) Prohibiting the former departmental employee from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Department on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate debarment or disqualification action, such as limiting the action to a particular organization or organizations within the Department.

(l) An order issued under either paragraph (k)(i) or (k)(ii) of this section shall be supplemented by a directive to officers and employees of the Department not to engage in conduct in relation to the former departmental employee that would contravene such order.

#### § 73b.5 Hearings.

(a) Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information of third parties is likely to be adduced at the hearing, it will remain closed. If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him/her, he/she shall be deemed to have waived the right to a hearing and the administrative law judge may make a decision on the basis of the record before him/her at that time.

(b) The rules of evidence prevailing in courts of law and equity are not controlling in hearings under this part. However, the administrative law judge

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shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(c) Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the administrative law judge be taken by either the Assistant General Counsel or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories. There shall be at least 10 days written notice to the other party. The requirement of a 10-day written notice may be waived by the parties in writing. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

## **PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS**

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AUTHORITY: 5 U.S.C. 301.

### Subpart A—General

SOURCE: 59 FR 43760, Aug. 25, 1994, unless otherwise noted.

#### § 74.1 Purpose and applicability.

(a) Unless inconsistent with statutory requirements, this part establishes uniform administrative requirements governing:

(1) Department of Health and Human Services' (HHS) grants and agreements awarded to institutions of higher education, hospitals, other nonprofit organizations and only to commercial organizations in instances other than those involving procedures to make data available under the Freedom of Information Act provision set forth in § 74.36(d)(1).

(2) Subgrants or other subawards awarded by recipients of HHS grants and agreements to institutions of higher education, hospitals, other nonprofit organizations and commercial organizations, including subgrants or other subawards awarded under HHS grants and agreements administered by State, local and Indian Tribal governments; and

(b) Nonprofit organizations that implement HHS programs for the States are also subject to state requirements.

(c) HHS shall not impose additional or inconsistent requirements except as provided in §§ 74.4 and 74.14, or unless specifically required by Federal statute or executive order.

[59 FR 43760, Aug. 25, 1994, as amended at 61 FR 11746, 11747, Mar. 22, 1996; 65 FR 14418, Mar. 16, 2000; 68 FR 52844, Sept. 8, 2003]

#### § 74.2 Definitions.

*Accrued expenditures* mean the charges incurred by the recipient during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subrecipients, and other payees; and, (3) other amounts becoming owed under programs for which no current services or performance is required.

*Accrued income* means the sum of: (1) Earnings during a given period from (i) services performed by the recipient, and (ii) goods and other tangible property delivered to purchasers; and (2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

*Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

*Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

*Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under Federal procurement laws and regulations.

*Cash contributions* mean the recipient's cash outlay, including the outlay